IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

1. Khem Chand & Another Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.965/2004)

2. Mahesh Kumar @ Melody Vs. State of Rajasthan
(S.B. CRIMINAL APPEAL NO.802/2004)

S. B. Criminal Appeals under Sec.374 (2) Cr.P.C. against the judgment dated 14-6-2004 in Sessions Case No.34/2003 passed by Sh. Abdul Gafoor, RHJS, Additional Sessions Judge (Fast Track) No.2, Jaipur City Jaipur.

Date of Judgment: April 25, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA

Mr. Manoj Sharma] for the appellants.
Mr. Umesh Shringi]

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT:

Challenge in these appeals is to the judgment dated June 14, 2004 of learned Additional Sessions Judge (Fast Track) No.2 Jaipur City Jaipur whereby the appellants Khem Chand and Mahesh Kumar @ Melodi were convicted and sentenced under section 376 IPC to suffer rigorous imprisonment for seven years and fine of Rs.2000/-, in default to further suffer simple imprisonment for two months.

Coaccused Vinita and Raju Mistri @ Raj Kumar were however acquitted of all the charges.

2. It is the prosecution case that informant Parmanand (Pw.)

submitted a written report (Ex.P-12) on May 6, 2003 at Police Station Shipra Path Mansarovar Jaipur to the effect that on that day his daughter Usha (fictitious name) was kidnapped by Khem Raj Sindhi. On that report a case was registered and investigation commenced. Statements of witnesses under section 161 CrPC were recorded and on completion of investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Jaipur City Jaipur. Charges under sections 376, 384 and 374/120B IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as many as 26 witnesses. In the explanation under Sec.313 CrPC, the appellants claimed innocence. Two witnesses in support of defence were examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. Having pondered over the rival submissions and on scanning the material on record, I find the factual situation of the case as under:-

(a) The prosecutrix on the date of incident was of the age of 22 years.

(b) Dr. Dinesh Dutt Mathur (Pw.11), who examined the prosecutrix did not find any injury on the person of prosecutrix.

(c) The prosecutrix (Pw.1) in the cross examination admitted that the photographs shown in court were not obscene. She also admitted that she and the accused were residing in the same building in Malviya Nagar.

(d) No specific allegation has been levelled against co-appellant Mahesh Kumar.

4. On analysing the evidence adduced at the trial, I find that the prosecution is able to establish that it was appellant Khem Chand who committed offence with the prosecutrix. Case against appellant Mahesh Kumar @ Melody could not however proved beyond reasonable doubt.

5. Evidently offence by appellant Khem Chand appears to have been committed by him in his youthful exuberance. The prosecutrix and the appellant Khem Chand on the date of incident were residing in one house and this possibility cannot be ruled out they had developed intimacy. The Age of prosecutrix was 22 years. However the appellant appears to have taken undue advantage of situation. In the facts and circumstances of the case the sentence imposed on the appellant Khem Chand appears too harsh.

6. In State of Rajasthan Vs. Ram Narain (1996)8 SCC 64, the age of the prosecutrix was between 15 to 17 years and the age of accused was 18 years. Learned Sessions Judge convicted the accused under sections 376, 366 and 342 IPC and sentenced him to undergo imprisonment for seven years, five years and one year respectively and imposed a fine of Rs.200/-. On appeal the High Court reduced the sentence to the period already undergone, namely one and a half months. The Apex Court set aside the judgment of High Court and observed as under:- (Para 7)

> "The question is: Whether the High Court is right in reducing the sentence to the period already undergone, i.e., one and a half months? We think that the High Court has committed grave error of law in reducing the sentence. Therefore the judgment of High Court is set aside. The conviction of the first accused is upheld and he is sentenced to undergo rigorous imprisonment for 5 years under section 376 IPC."

7. In Ummaid Nath Vs. State of Rajasthan (1999(2) RCC 1383)

wherein the age of the prosecutrix was found below 16 years at the time of occurrence and the prosecutrix went with the accused willingly and thus the sentence of ten years rigorous imprisonment was reduced to five years rigorous imprisonment.

8. For these reasons, I dispose of instant appeals in the following terms:-

(i) Appeal of appellant Mahesh Kumar @ Melody stands allowed and he stands acquitted of the charge under section 376 IPC. Appellant Mahesh Kumar @ Melody is on bail, he need not surrender and his bail bonds stand discharged.

(ii) Appeal of appellant Khem Chand stands partly allowed and while maintaining his conviction under section 376 IPC I reduce his sentence from 7 years rigorous imprisonment and fine of Rs.2000/- to 5 years rigorous imprisonment and fine of Rs.1000/-, in default to further suffer six months rigorous imprisonment.

(iii)The impugned judgment of learned trial court stands modified as indicated above.

(Shiv Kumar Sharma)J.

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